



**Issue Date: 29 April 2004**

**Case No.: 2004AIR6**

**In the Matter of**

**Coleen L. Powers,  
Complainant**

**v.**

**Pinnacle Airlines, Inc.,  
Respondent**

**DECISION AND ORDER  
DENYING THE COMPLAINANT'S CLAIM**

The hearing on this claim is scheduled for May 12 and 13, 2004, in Memphis, Tennessee. For the reasons discussed below, this hearing has been cancelled, and the Complainant's claim is hereby denied.

Since I issued my Order Denying Complainant's April 10, 2004 Motion on April 15, 2004, the following pleadings have been filed by the parties.

**For the Complainant:**

On April 15, 2004 by telefax, and on April 16 by mail, the Complainant filed her "Complainant's Motion for Change in Location, Time, & Date of Hearing & To Continue for Good Cause; & Request for Judicial Notice of Named Person Pinnacle's Misleading & Unethical April 14, 2004 "Opposition Filing" to Complainant's Supported April 10, 2004 Motions."

On April 18, 2004 by telefax, and on April 22, 2004 by mail, the Complainant filed her "Complainant's Supplement to Her April 15, 2004 Motion for Continuance of Hearing in 2004-AIR-6 Based Further on Receipt of ALJ's April 14, 2004 Order in 2004-AIR-19; Motion to Consolidate to Conserve Judicial Resources; Motion to Amend/Alter the Harmful Errors in the April 14, 2004 Order in 2004-AIR-19; Motion to ALJ to Properly Address the Conflict of Interests {Disqualify} & Prohibited Exparte Material Communications With Mr. Doug Hall and His Law Firm, Piper Rudnick, LLP, in These Matters."

On April 21, 2004 by telefax, and on April 22, 2004 by mail, the Complainant filed her "Complainant's Motion for Recusal of ALJ Chapman in 2004-AIR-6 & 2004-AIR-19."

On April 22, 2004 by telefax, and on April 24, 2004 by mail, the Complainant filed her "Complainant's Notice of Revised Estimate of Number of Days for Hearing And Her Preliminary Witness/Exhibit Lists Pursuant to Orders Dated December 16, 2003, January 23, 2004, February 12, 2004, & March 31, 2004; Preliminary Written Objections to Name Person, Pinnacle Proposed Acronym List, Proposed Exhibits, & Organizational Charts Received April 14, 21, 22, 2004; Request for Extension of Time to Respond to Documents Received from Pinnacle on April 22, 2004; Motion to Extend Discovery Beyond April 29, 2004."

On April 23, 2004 by telefax, and on April 26, 2004 by mail, the Complainant filed her "Complainant's Notice of Filing Written Objections & Suggestions to Named Person Pinnacle Revised & Proposed "Organizational Charts" {10} Dated April 16, 2004."

On April 23, 2004 by telefax, and on April 26, 2004 by mail, the Complainant filed her "Complainant's Notice of Filing Proposed Preliminary Airline Acronym List & Notice of Intent."

On April 24, 2004 by telefax, and on April 26, 2004 by mail, the Complainant filed her "Complainant's Notice of Filing Pre-Hearing Submission Statements Pursuant to ALJ Orders Dated December 16, 2003, February 12, 2004, March 31, 2004, and April 15, 2004."

On April 26, 2004 by telefax, the Complainant filed her "Complainant's Notice of Filing Written Technical Reference Corrections to Page 6 of Complainant Filing Identified as "CX-152"; {April 20/21, 2004 Recusal Motion of ALJ Chapman, With April 22, 2004 Amended Certificate of Service}."

On April 26, 2004, by mail, the Complainant filed her "Complainant's Motion for Recusal of ALJ Chapman in 2004-AIR-6 & 2004-AIR-19."

On April 26, 2004, by telefax, the Complainant filed her "Complainant's Notice of Filing Additional Proposed Exhibits and Witnesses."

On April 27, 2004 by telefax, the Complainant filed her "Complainant's Notice of Filing Proposed, Preliminary, Comprehensive Witness List {2003-AIR-12; ARB 04-035; 2004-AIR-6; ARB 04-066; 2004-AIR-19}."

On April 27, 2004 by telefax at 6:12 p.m., and again at 6:20 p.m., the Complainant filed her "Complainant's Written Justification for Expedited Issuance of Twenty-Five (25) Blank Pre-Printed Subpoenas & Request for Issuance of Subpoena to Order Production, Permit Inspection, and Copying of Tangible Evidentiary Documents Prior to Hearing."

On April 28, 2004, by telefax, the Complainant filed her "Complainant's Supplemental Written Reply, Objections, & Sworn Affidavit to Named Person Pinnacle Motion for Specious Summary Judgment Received April 22, 2004."

**For the Respondent:**

On April 19, 2004, by mail, the Respondent filed its “Respondent’s Pre-Hearing Submission,” and “Respondent’s Motion for Summary Judgment and Memorandum in Support Thereof.”

On April 20, 2004 by telefax, the Respondent filed its “Respondent’s Motion for the Imposition of Discovery Sanctions.”

On April 20, 2004, by telefax, the Respondent filed its “Respondent’s Opposition to Complainant’s Motion Dated April 15, 2004.”

On April 21, 2004, by telefax, the Respondent filed its “Respondent’s Opposition to Complainant’s Motion Dated April 18, 2004.”

On April 26, 2004 by telefax, the Respondent filed its “Respondent’s Opposition and Objection to Complainant’s Pleading Dated April 22, 2004.”

On April 26, 2004, by telefax, the Respondent filed its “Respondent’s Opposition to Complainant’s Recusal Motion.”

**DISCUSSION**

***Motion for the Imposition of Discovery Sanctions***

In its Motion for the Imposition of Discovery Sanctions, the Respondent states that it served its discovery requests on the Complainant by mail on December 19, 2003, and twice agreed to her request to extend her response date. The Complainant served her interrogatory responses on February 22, 2004, and her document request responses on February 24, 2004. Counsel for the Respondent subsequently sent two requests for supplementation of deficiencies in the discovery response to the Complainant, but she refused to further supplement her responses, and the Respondent filed a Motion to Compel.

On March 31, 2004, I issued an Order granting the Respondent’s Motion to Compel, directing the Complainant to respond to the Respondent’s requests forthwith, and reminding her that if she did not cooperate in discovery, she could be subject to sanctions, to include the dismissal of her claim.

According to the Respondent, on April 7, 2004, counsel e-mailed the Complainant, requesting that she respond to the Respondent’s discovery requests by close of business on April 15, 2004. The Complainant responded on April 10, 2004, stating that this deadline was not realistic, and asked that Respondent agree to continue the case until August or September. On that same day, the Complainant filed her motion to, *inter alia*, “amend & alter” my March 31, 2004 Order. According to counsel for the Respondent, on April 10 and 12, 2004, the Complainant forwarded approximately 50 e-mails each day to counsel. On April 12, 2004, counsel informed the Complainant that the Respondent would not consent to a continuance, as it

was her failure to adequately respond to discovery requests that had caused the situation. Counsel also advised the Complainant that she had found sufficient time to file numerous lengthy briefs in her cases against the Respondent, and it appeared that the problem was not that she did not have sufficient time to respond to discovery requests, but that she had not given that task priority. Counsel again requested whether the Complainant would respond to discovery by April 15.

On April 13, 2004, the Complainant advised the Respondent that she would not comply with an April 15 deadline, and accused counsel of hostilities and attempts at corporate intimidation, and threatened to file a complaint against him with the bar association.

In her pleading that was filed by telefax on April 22, 2004, the Complainant stated:

Pinnacle counsel seems to not be able to comprehend the court's Order that discovery would end two {2} weeks before the hearing date. Given the present date of hearing is set for May 12, 2004, this would mean that discovery is open through April 28, 2004. It appears to Ms. Powers, a reasonable lay person, that she would have at least until April 28, 2004, 2359 CDT to provide the additional broad and burdensome supplementation requests to his discovery.

(Complainant's Pleading at 14).

I have reviewed the Complainant's pleadings carefully, and this is the only one that appears to address, even obliquely, the Respondent's Motion for Imposition of Discovery Sanctions. It appears that the Complainant is referring to my Prehearing Order, issued on December 16, 2003, which stated that discovery would end fourteen days before the scheduled hearing date. However, in my March 31, 2004 Order, I made it clear that the Complainant was to provide complete responses to the Respondent's discovery requests "forthwith." Indeed, the Complainant requested that I reconsider this Order, a request that I denied in an April 15, 2004 Order.

But it appears that the Complainant has chosen to ignore these Orders, and has refused to provide the Respondent with discovery as required. Nor has she responded to the Respondent's request for sanctions, other than to chide opposing counsel for expecting her to comply with the Court's Orders.

Title 29 C.F.R. Section 18.6(d)(2) provides:

If a party or an officer or agent of a party fails to comply with a subpoena or with an order, including, but not limited to, an order for the taking of a deposition, the production of documents, or the answering of interrogatories, or requests for admissions, or any other order of the administrative law judge, the administrative law judge, for the purpose of permitting resolution of the relevant issues and disposition of the proceeding without unnecessary delay despite such failure, may take such action in regard thereto as is just, including but not limited to the following:

(v) Rule that a pleading, or part of a pleading, or a motion or other submission by the non-complying party, concerning which the order or subpoena was issued, be stricken, or that a decision of the proceeding be rendered against the non-complying party, or both.

Here, the Complainant was specifically directed to provide a complete response to the Respondent's discovery requests that were served on her in December 2003. Her April 10, 2004 request for reconsideration of my March 31, 2004 Order again reflects her refusal to recognize the authority of this Court to oversee and control the proceedings in this claim. Thus, the Complainant stated in that pleading:

Ms. Powers' has fully complied with Rule 18, Fed.Rules of Civ.Proc. Rules 26 and 37 as evidenced by her responses filed with opposing counsel and Ms. Powers motion to this court for a protective order pursuant to Rule 26 [a motion that I denied]; thus, by definition, pursuant to Rule 37, there has been no "failure to cooperate in discovery" as accused by opposing counsel and erroneously declared by this court in its March 31, 2004 Order.

(Complainant's pleading at 16).

In that same document, the Complainant argued that several of the documents Respondent's counsel requested were already in his possession, or that he had access to them through his clients or through FOIA requests from government agencies. She argued that they were readily available to him, and that it was an undue hardship and burden on her to produce them, and that she should not be required to assist counsel in preparation of his own case. These were the very arguments that I rejected in my March 31, 2004 Order, and subsequently, in my April 15, 2004 Order denying the Complainant's request for reconsideration.

The Complainant still refuses to comply with my Orders, choosing to ignore them and rely on the general language of the prehearing order providing that discovery would end two weeks before the hearing. It is not reasonable to interpret my March 31, 2004 Order to provide discovery responses "forthwith" to mean that such responses could be withheld until the close of discovery. Nor is there any indication that the Complainant has provided the required responses as of the date of this Order.

As I noted in my March 31, 2004 Order, the Respondent is entitled to know the basis for the Complainant's claims that are the subject of this case, as well as the damages that she seeks, and the basis for those damages, in order to prepare for hearing. Yet the Complainant has refused to fully participate and cooperate in the discovery process, and instead has peppered the Court and opposing counsel with pleadings raising issues that have nothing to do with this case, and attacking the character, integrity, and intelligence of the Court and opposing counsel.

In short, the Complainant has not complied with the Orders I issued directing her to respond to the Respondent's discovery "forthwith," and indeed has made it clear that she does not intend to do so. Nor has she provided any meaningful response to the Respondent's motion for sanctions. Accordingly, as provided by 29 C.F.R. Section 18.6(2)(v), based on the

Complainant's failure to cooperate in discovery, and her failure to comply with my Orders directing her to do so, her complaint for relief under AIR 21 is denied.

***Other Requests***

As I am denying the Complainant's claim, it is not necessary for me to address the other requests from the parties, including:

- The Complainant's request for continuance, and consolidation with 2004 AIR 19;
- The Complainant's request that I "address the conflicts of interests and prohibited ex parte communications by Mr. Hall with this court;"<sup>1</sup>
- The Complainant's request that I "review and become competent in the Code of Federal Regulations . . . and apply substantive law as required;"
- The Complainant's request that I sanction Respondent's counsel for ex parte communications;
- The Complainant's request for my recusal, and that I "conduct introspection;"
- The Complainant's request for a change in hearing location;
- The Respondent's Motion for summary judgment;
- The Complainant's request for the issuance of 25 blank subpoenas.<sup>2</sup>

Accordingly, for the reasons discussed above, IT IS HEREBY ORDERED that the Complainant's claim for relief under AIR 21 is DENIED. IT IS FURTHER ORDERED that the hearing scheduled for May 12 and 13, 2004, in Memphis, Tennessee is cancelled.

SO ORDERED.

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LINDA S. CHAPMAN  
Administrative Law Judge

**NOTICE OF APPEAL RIGHTS:** This decision shall become the final order of the Secretary of Labor pursuant to 29 C.F.R. § 1979.110, unless a petition for review is timely filed with the Administrative Review Board ("Board"), US Department of Labor, Room S-4309, 200 Constitution Avenue, NW, Washington DC 20210, and within 30 days of the filing of the petition, the ARB issues an order notifying the parties that the case has been accepted for review. The petition for review must specifically identify the findings, conclusions or orders to which exception is taken. Any exception not specifically urged ordinarily shall be deemed to have been

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<sup>1</sup> Like the Respondent, I am mystified as to the grounds for this request, as no ex parte communications have taken place between the Court and either party.

<sup>2</sup> The sample subpoena provided by the Complainant requires the witness to produce virtually all personnel records for numerous departments at three of the Respondent's hubs for the last three years. I previously granted the Respondent's request for a protective order with respect to similar documents sought by the Complainant in discovery. It appears that, despite my previous Order, the Complainant is again seeking to obtain these records.

waived by the parties. To be effective, a petition must be filed within ten business days of the date of the decision of the administrative law judge. The date of the postmark, facsimile transmittal, or e-mail communication will be considered to be the date of filing; if the petition is filed in person, by hand-delivery or other means, the petition is considered filed upon receipt. The petition must be served on all parties and on the Chief Administrative Law Judge at the time it is filed with the Board. Copies of the petition for review and all briefs must be served on the Assistant Secretary, Occupational Safety and Health Administration, and on the Associate Solicitor, Division of Fair Labor Standards, U.S. Department of Labor, Washington, DC 20210. *See* 29 C.F.R. §§ 1979.109(c) and 1979.110(a) and (b), as found OSHA, Procedures for the Handling of Discrimination Complaints Under Section 519 of the Wendell H. Ford Aviation Investment and Reform Act for the 21st Century; Final Rule, 68 Fed. Reg. 14099 (Mar. 21, 2003).